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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION  
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11 NEIL CORROW,  
12 Plaintiff,  
13 vs.  
14 BUREAU OF PRISONS, et al.,  
15 Defendants.  
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Case No. CV 08-5815-TJH (JWJ)  
MEMORANDUM AND ORDER  
DISMISSING CIVIL RIGHTS  
COMPLAINT WITH PREJUDICE  
IN PART AND WITH LEAVE TO  
AMEND IN PART

17  
18 **I. BACKGROUND**

19 On September 9, 2008, plaintiff Neil Corrow, a federal prisoner  
20 proceeding pro se, filed in this Court a Civil Rights Complaint under Bivens v.  
21 Six Unknown Agents, 403 U.S. 388 (1971) (hereinafter "Complaint"). This  
22 Court has screened the Complaint pursuant to 28 U.S.C. § 1915A, the Federal  
23 Rules of Civil Procedure and the Local Rules of the Central District of  
24 California.

25 Plaintiff alleges that defendants Federal Correctional Institute, Warden  
26 Linda Sanders, Dr. Nguyen, Counselor Cunningham, Case Worker DeBoise,  
27 and Unit Manager Johnson violated plaintiff's rights while plaintiff was  
28 incarcerated at Lompoc Federal Correctional Institute in Lompoc, California.

(Complaint, pp. 2-5.) Plaintiff also names the Bureau of Prisons and Dr. Patel as defendants in the caption of the Complaint.<sup>1</sup> (Id. at 1.) Plaintiff names defendants Sanders, Nguyen, Cunningham, DeBoise, and Johnson in their individual and official capacities. (Id. at 3-4.)

Plaintiff alleges that defendants Nguyen and Sanders were responsible for plaintiff's not receiving his prescribed medication. (Id. at 5.) Plaintiff claims that he submitted requests for a longer stay at a halfway house and for information about a compassionate release. Plaintiff appears to allege that defendants Deboise, Cunningham, and Johnson were responsible for not accommodating plaintiff's requests. (Id. at 5.) Plaintiff seeks \$1,000,000.00 in damages from each defendant, and an additional \$10,000,000.00 in damages from the Federal Bureau of Prisons. (Id. at 6.)

For the reasons discussed below, the Complaint is dismissed with prejudice in part and dismissed with leave to amend in part.

## II. STANDARD OF REVIEW

A court may dismiss a claim upon motion of the defendants or sua sponte pursuant to Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted." See Wong v. Bell, 642 F.2d 359, 361-62 (9th Cir. 1981). A complaint may be dismissed for failure to state a claim upon which relief can be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct.

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<sup>1</sup> The caption does not indicate which Bureau of Prisons the plaintiff is referring to. However, since plaintiff seeks damages against the Federal Bureau of Prisons (Complaint, p. 6.), this Court concludes that plaintiff intends to name the Federal Bureau of Prisons in the caption of the Complaint.

1 99, 2 L. Ed. 2d 80 (1957)). In reviewing a complaint under this standard, the  
2 Court must accept as true the allegations of the complaint in question,  
3 Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740, 96 S. Ct.  
4 1848, 48 L. Ed. 2d 338 (1976), construe the pleading in the light most  
5 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins  
6 v. McKeithen, 395 U.S. 411, 421, 89 S. Ct. 1843, 23 L. Ed. 2d 404 (1969).  
7 However, the "court is not required to accept legal conclusions cast in the form  
8 of factual allegations that cannot reasonably be drawn from the facts alleged  
9 [citations omitted]." Clegg v. Cult Awareness Network, 18 F.3d 752, 754 (9th  
10 Cir. 1994).

11 Review of a complaint for failure to state a claim is generally limited to  
12 the contents of the complaint. See Buckey v. City of Los Angeles, 968 F.2d  
13 791, 794 (9th Cir.), cert. denied, 506 U.S. 999, 113 S. Ct. 599, 121 L. Ed. 2d  
14 536 (1992). However, material which is properly submitted as part of the  
15 complaint may be considered on a motion to dismiss, and such material is not  
16 "outside" the complaint if the complaint specifically refers to the document(s)  
17 and its authenticity is not questioned. See Branch v. Tunnell, 14 F.3d 449,  
18 453 (9th Cir. 1994) (citations omitted), cert. denied, 512 U.S. 1219, 114 S.  
19 Ct. 2704, 129 L. Ed. 2d 832 (1994). The Court may also properly consider  
20 material submitted as exhibits to the complaint, see Hal Roach Studios v.  
21 Richard Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1990), and documents  
22 crucial to the plaintiff's claims, but not explicitly incorporated in the  
23 complaint. See Parrino v. FHP, Inc., 146 F.3d 699, 705-06 (9th Cir.), cert.  
24 denied, 525 U.S. 1001, 119 S. Ct. 510, 142 L. Ed. 2d 423 (1998) (citing  
25 Branch v. Tunnell, 14 F.3d at 454). The Court may properly consider matters  
26 of public record: for example, pleadings, orders and other papers on file in  
27 another action pending before the court, records and reports of administrative  
28 bodies, or the legislative history of laws, rules or ordinances. See Mack v.

1 South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).

2 The complaint may be dismissed where it discloses some fact that will  
 3 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29  
 4 (9th Cir. 1984). However, in a pro se civil rights case, the complaint must be  
 5 construed liberally to afford the plaintiff the benefit of any doubt. Karim-  
 6 Panahi v. Los Angeles Police Department, 839 F.2d 621, 623 (9th Cir. 1988).  
 7 Before dismissing a pro se civil rights complaint for failure to state a claim, the  
 8 plaintiff should be given a statement of the complaint's deficiencies and an  
 9 opportunity to cure. Id. Only if it is absolutely clear that the deficiencies  
 10 cannot be cured by amendment should the complaint be dismissed without  
 11 leave to amend. Karim-Panahi, 839 F.2d at 623; see also Cato v. United  
 12 States, 70 F.3d 1103, 1106 (9th Cir. 1995).

### 13 III. DISCUSSION

#### 14 A. Sovereign Immunity.

15 As a sovereign, the United States is immune from suit unless it expressly  
 16 waives its immunity and consents to be sued. Gilbert v. DaGrossa, 756 F.2d  
 17 1455, 1458 (9<sup>th</sup> Cir. 1985). The United States has not waived its sovereign  
 18 immunity for suits seeking money damages under Bivens. Arnsberg v. United  
 19 States, 757 F.2d 971, 980 (9<sup>th</sup> Cir. 1984), *cert. denied*, 475 U.S. 1010 (1986).  
 20 Since the United States is immune from suit, and plaintiff has made no  
 21 showing that the United States has expressly waived its immunity as to any of  
 22 plaintiff's claims, this Court is without subject matter jurisdiction over  
 23 plaintiff's claims against the Federal Correctional Institute.

24 Plaintiff also names the Federal Bureau of Prisons as a defendant.  
 25 (Complaint, pp. 1, 6.) A Bivens claim cannot be brought against a federal  
 26 agency. Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 114 S. Ct. 996,  
 27 1005-06 (1993) ("If we were to imply a damages action directly against federal  
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1 agencies, thereby permitting claimants to bypass qualified immunity, there  
 2 would be no reason for aggrieved parties to bring damages actions against  
 3 individual officers. . . . [T]he deterrent effects of the Bivens remedy would be  
 4 lost.") Thus, the Federal Bureau of Prisons is not a proper defendant to the  
 5 plaintiff's Bivens claims.

6 Plaintiff names defendants Sanders, Nguyen, Cunningham, DeBoise, and  
 7 Johnson in their individual and official capacities. (Complaint, pp. 3-4.)  
 8 Plaintiff seeks monetary damages against them under Bivens, (Complaint, p.  
 9 6), and they are federal employees. (Id. at 3-4.) A suit against a federal officer  
 10 or employee in his or her official capacity, however, is a suit against the United  
 11 States. Gilbert v. DaGrossa, 756 F.2d at 1458. Thus, plaintiff's above official  
 12 capacity claims are barred by the doctrine of sovereign immunity to the extent  
 13 plaintiff seeks damages or other retroactive relief.

14 This Court is therefore without subject matter jurisdiction to consider  
 15 plaintiff's allegations against the following defendants: a) Federal Correctional  
 16 Institute; b) Federal Bureau of Prisons; and c) defendants Sanders, Nguyen,  
 17 Cunningham, DeBoise, and Johnson in their official capacities. Accordingly,  
 18 the Complaint must be dismissed with prejudice as to the claims against the  
 19 aforementioned defendants.

## 20 **B. Specificity of Claims and Causal Connection.**

21 A Bivens action states a civil rights complaint against a federal official.  
 22 See Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S. Ct.  
 23 1994, 29 L. Ed. 2d 619 (1971). To state a Bivens action, the plaintiff must  
 24 allege facts showing a person acting under color of federal authority deprived  
 25 the plaintiff of a right, privilege, or immunity secured by the Constitution.  
 26 Bivens, 403 U.S. at 389. Actions under 42 U.S.C. § 1983 and those under  
 27 Bivens are identical save for the replacement of a state actor under § 1983 by a  
 28 federal actor under Bivens. See Van Strum v. Lawn, 940 F.2d 406 (9<sup>th</sup> Cir.

1 1991). Generally, law for civil rights suits brought pursuant to 42 U.S.C.  
2 § 1983 is incorporated in a Bivens action. See Ting v. United States, 927 F.2d  
3 1504, 1511 (9<sup>th</sup> Cir. 1991).

4 A successful Bivens claim requires that a defendant be personally  
5 involved in the deprivation of plaintiff's constitutional rights. Tajeddini v.  
6 Gluch, 942 F. Supp. 772, 779 (D. Conn. 1996), citing Gill v. Mooney, 824  
7 F.2d 192, 196 (2d Cir. 1987). A plaintiff can prove such personal involvement  
8 through evidence that: "1) the defendant participated directly in the alleged  
9 infraction; 2) the defendant, with actual or constructive knowledge of the  
10 violation, failed to remedy the wrong; 3) the defendant created or permitted  
11 the policy or custom under which the unconstitutional practices occurred; 4)  
12 the defendant was grossly negligent in managing subordinates who caused the  
13 violations; or 5) the defendant failed to act on information indicating that the  
14 constitutional deprivations were taking place." Tajeddini v. Gluch, 942 F.  
15 Supp. at 779 (citing Colon v. Coughlin, 58 F.3d 865, 873 (2d Cir. 1995). The  
16 doctrine of respondeat superior is inapplicable to Bivens actions. Terrell v.  
17 Brewer, 935 F.2d 1015, 1018 (9<sup>th</sup> Cir. 1991).

18 Furthermore, Rule 8(a) of the Federal Rules of Civil Procedure requires  
19 sufficient allegations to put the defendants fairly on notice of the claims against  
20 them. McKeever v. Block, 932 F.2d 795, 797 (9<sup>th</sup> Cir. 1991). A district court  
21 may dismiss an action for a pro se party's failure to comply with Rule 8(a) if  
22 meaningful, less drastic sanctions have been explored. Nevijel v. North Coast  
23 Life Ins. Co., 651 F.2d 671, 674 (9<sup>th</sup> Cir. 1981).

24 Here, plaintiff has failed to allege sufficient facts to support a  
25 constitutional claim against defendants Sanders, Nguyen, Cunningham,  
26 DeBoise, Johnson, and Patel. Plaintiff does not clearly state how these  
27 defendants were personally involved with the deprivation of his rights.  
28 (Complaint, pp. 3-5.) Plaintiff fails to allege specific acts or omissions with any

1 degree of particularity. (Id.) Plaintiff does not indicate specifically how  
2 defendants Sanders and Nguyen were responsible for plaintiff's not receiving  
3 his prescribed medication. Plaintiff also does not indicate specifically how  
4 defendants Cunningham, DeBoise, and Johnson were responsible for plaintiff's  
5 not receiving extended access to a halfway house. Plaintiff fails to make any  
6 allegations at all against defendant Patel. Accordingly, the Complaint must be  
7 dismissed with leave to amend as to the above named defendants to allow  
8 plaintiff an opportunity to set forth each constitutional violation, the  
9 defendants that allegedly violated that particular constitutional right, and facts  
10 supporting plaintiff's claim that each defendant directly violated that  
11 constitutional right.

### 12 ORDER

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14 For all the foregoing reasons, **IT IS HEREBY ORDERED AS**  
15 **FOLLOWS:**

- 16 1. The Complaint is **dismissed with prejudice** as to defendants  
17 Sanders, Nguyen, Cunningham, DeBoise, and Johnson in their  
18 official capacities to the extent that plaintiff seeks monetary  
19 damages from the defendants;
- 20 2. The Complaint is **dismissed with prejudice** as to the Federal  
21 Correctional Institute and the Federal Bureau of Prisons; and
- 22 3. The Complaint is **dismissed with leave to amend** as to  
23 defendants Sanders, Nguyen, Cunningham, DeBoise, Johnson, and  
24 Patel, in that respective individual capacities, in order to allow  
25 plaintiff to remedy the deficiencies explained above.

26 Plaintiff shall have **twenty-one (21) days** from the date of this Order to  
27 file a First Amended Complaint. The First Amended Complaint must comply  
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1 with all the applicable provisions of the Prison Litigation Reform Act, Pub. L.  
2 No. 104-134, 110 Stat. 1321 (codified in Sections of Titles 18, 28 and 42  
3 U.S.C.), the Federal Rules of Civil Procedure, and the Local Rules for the  
4 Central District of California.

5 The First Amended Complaint must be labeled with the case number  
6 assigned to this case, and must be labeled "First Amended Complaint." In  
7 addition, plaintiff is informed that the Court cannot refer to a prior pleading in  
8 order to make plaintiff's First Amended Complaint complete. Local Rule 15-2  
9 requires that an amended complaint be complete in and of itself without  
10 reference to any prior pleading. This is because, as a general rule, an amended  
11 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,  
12 57 (9<sup>th</sup> Cir. 1967).

13 The Court Clerk is directed to enclose with this Order two copies of the  
14 form civil rights complaint for plaintiff's use in preparing a First Amended  
15 Complaint.

16 Failure to file a First Amended Complaint in accordance with this Order  
17 will result in a recommendation that this action be dismissed with prejudice for  
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1 failure to prosecute and/or failure to comply with this Court's order. See  
2 Fed. R. Civ. P. 41(b); see also Link v. Wabash R.R., 370 U.S. 626, 629-30, 82  
3 S.Ct. 1386, 1388, 8 L.Ed.2d 734 (1962).

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5 DATED: May 22, 2009

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7 \_\_\_\_\_/s/\_\_\_\_\_  
8 TERRY J. HATTER, JR.  
United States District Judge

9 Presented by:  
10 DATED: May 19, 2009

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12 \_\_\_\_\_/s/\_\_\_\_\_  
13 JEFFREY W. JOHNSON  
United States Magistrate Judge